

Advisory Opinion

IECDB AO 2008-12

August 28, 2008

The Honorable Tom Slockett
Johnson County Auditor
913 S. Dubuque Street, Suite 101
Iowa City, Iowa 52240-4207

Dear Auditor Slockett:

This opinion is in response to your email letters of October 15, 2007, and October 19, 2007, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

In October of 2007 you had communications with the Board's Executive Director/Legal Counsel concerning campaign sign placement. As part of those communications, you were advised that the Board would be seeking legislative action from the 2008 General Assembly to address some of your questions. That legislation passed effective July 1, 2008. The Board now issues this opinion applying the amended law to your specific questions.

QUESTIONS:

1. Is a sign placed outside the 300 foot limit that is large enough to be viewed through a window at a satellite voting station in violation of the law?
2. Are signs that may or may not be visible outside that are within 300 feet of a satellite voting station on private or public property such as student dormitories, rooms, or apartments in violation of the law?
3. Is electioneering within 300 feet of a satellite polling place but not within the sight or sound of the actual polling place room in violation of the law?
4. How is the 300 feet measured?

5. How does the law apply to public university housing?
6. Is the 300 feet measurement different for satellite voting stations and absentee voting stations different than on Election Day?

OPINION:

Iowa Code section 68A.406 governs the placement of campaign signs. That statute was amended by 2008 Iowa Acts, House File 2700, section 118. We also note that sign restrictions in Iowa Code sections 53.10 and 53.11 were repealed as those restrictions are also in Iowa Code section 68A.406.¹ We have attached the full text of Iowa Code section 68A.406 as amended.

We note the following general provisions concerning your questions:

1. The law has been amended to remove distinctions among signs placed within 300 feet of a polling place on Election Day, a location for satellite voting, or a location for absentee ballots. Thus, while some of your questions are specific to satellite voting locations, the answer would be the same for all signs within 300 feet of a location where ballots were being cast.
2. The 300 foot rule does not apply to signs placed on private property except for signs larger than 90 square inches on vehicles. For example, it is permissible for a sign to be placed in a residential yard that is within 300 feet of a polling place.
3. There are restrictions on signs being placed on property owned, leased, or occupied by corporations, financial institutions, and insurance companies under Iowa Code section 68A.503. In addition, government entities have restrictions on their ability to permit placement of campaign signs under Iowa Code section 68A.505.

In answer to your specific questions set out above:

1. Iowa Code section 68A.406 only applies to the placement of a sign and not to the visibility of a sign. Thus, a sign placed outside of the 300 foot zone is permitted under the law even if it can be viewed by someone standing in the 300 foot zone.
2. As noted, signs on private property except for signs larger than 90 square inches on vehicles are not prohibited. The law was amended to make clear that it was permissible to place signs on “apartments, condominiums, college housing facilities, and houses” that are leased so long as the signs are “placed only on leased property space that is actually occupied.”
3. Whether or not “electioneering,” apart from sign placement, is occurring within 300 feet is not under the jurisdiction of the Board. We suggest you look at Iowa Code chapter 39A and Iowa Code sections 53.10 and 53.11 for guidance.

4. The law says the 300 foot zone is measured from any outside door of any building affording access to” a polling place, satellite voting station, or absentee voting station. The Board views this as being a radius from such door.

5. Iowa Code section 68A.406(1)“c” was amended to include “college housing facilities” in the definition of “property leased for residential purposes”. Thus, it is permissible for students to place signs on the occupied portion of public university housing. ²

6. As we have mentioned, Iowa Code section 68A.406(2) has been amended to remove distinctions between Election Day and satellite voting sites and absentee voting sites.

In closing, we note that the Board has also issued IECDB Advisory Opinion 2008-14 discussing the permitted and prohibited placement of campaign signs. You may want to review that opinion as it will provide additional guidance concerning your questions.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ See 2008 Iowa Acts, House File 2700, sections 114 and 115.

² Please note that we are discussing the application of the law itself and we are not interpreting any provisions of university policy or any rental agreements between a university and a student.